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P R O C E E D I N G S

THE CLERK: All rise.

(Whereupon, the Court entered.)

THE CLERK: Court is open. Please be seated.

The case before this Court carries Case No. 13cr10242,
United States of America versus Marquis Simmons.

Counsel, please identify yourselves for the record.

MR. CROWLEY: Good afternoon, your Honor. Michael
Crowley on behalf of the United States.

MR. DARRELL: Good afternoon, your Honor. John
Darrell on behalf of Marquis Simmons.

THE COURT: All right.

We've all reviewed the presentence report, and I don't
think there is any significant quarrel with the probation
officers's calculation of the offense level at 21 and the
Criminal History Category at III.

The advisory guideline range, consequently, would be
106 to roughly 113 or 114 months. I know that the
government proposes something different, and I know that the
defendant proposes something slightly different than the
government's recommendation.

So, Mr. Crowley, why don't I hear from you.

MR. CROWLEY: Your Honor, in light of the sentence
provided yesterday, we don't view there to be a substantial
difference between the two defendants in this case. There

1 is somewhat of a difference in the criminal histories, but
2 by their actions in this case, they are basically the same,
3 Mr. Simmons and Mr. Rodriguez. They were both involved in
4 the vehicle with firearms going to commit the robbery.

5 The Court imposed a sentence yesterday on Mr. Rodriguez
6 of 69 months. We would recommend the same sentence for
7 Mr. Simmons, even though it was substantially below, but we
8 don't see there to be a significant difference in the
9 criminal histories.

10 We originally in the plea agreements had them at the
11 same level, and based upon those actions, we don't believe
12 it would appropriate to deviate from what we offered the two
13 defendants. So we would recommend a sentence of 69 months,
14 which is the exact sentence that the codefendant that was
15 sitting actually next to Mr. Simmons yesterday received from
16 the Court, a \$200 special assessment, and we would recommend
17 the same 60 months to run -- three years of supervised
18 release for Count One and five years for Count Two.

19 THE COURT: I think that's very fair on the
20 government's part.

21 I gather you concur, given --

22 MR. DARRELL: Judge, I, of course, have spoken to
23 Mr. Simmons. Unfortunately -- well, matters always happen
24 to slow things down. I only had a brief time. My
25 suggestion here, my request to the Court -- I don't want to

1 mess things up, what I consider a fair recommendation and,
2 again, consistent with somebody literally sitting in the
3 backseat with him and comparable backgrounds.

4 THE COURT: I think trying to achieve some
5 proportionality in sentencing, I think, is the appropriate
6 principle, as Mr. Crowley has indicated, and I think it
7 appears certainly to me as a judge.

8 Mr. Simmons, do you wish to address the Court? You may
9 if you choose. You're not required to, but if you would
10 like to say something, you're welcome to.

11 THE DEFENDANT: I want to apologize for wasting the
12 Court's time and all that.

13 Sixty-nine months, that's quite a long time, you know.

14 THE COURT: It's a long time, but the Congress has
15 made 60 months mandatory, and then, of course, there's
16 another conviction over and above that. But I would not
17 like to see you a get a longer sentence than the codefendant
18 who is in the same situation, but I understand it's a long
19 time from any point of view.

20 THE DEFENDANT: Yeah.

21 Well, I just wanted to apologize for wasting the
22 Court's time.

23 THE COURT: You're not wasting time. This is what,
24 on good and bad days, what courts do.

25 THE DEFENDANT: I don't really know what to say,

1 man.

2 THE COURT: As I say, you're not required to say
3 anymore than you have.

4 Mr. Simmons, if you wouldn't mind standing again.

5 Mr. Simmons, pursuant to the Sentencing Reform Act of
6 1984, and having considered the sentencing factors
7 enumerated at 18, United States Code, Section 3553(a), as
8 well as the dispositions in the cases of your codefendants
9 in this matter, it is the judgment of the Court that you be
10 committed to the custody of the Bureau of Prisons for a term
11 of 69 months.

12 This term will consist of nine months on Count One and
13 a term of 60 months on Count Two, which by law must be
14 served consecutively to the term imposed on Count One.

15 The Court will make a judicial recommendation that you
16 participate in substance abuse treatment while in the
17 custody of the Bureau of Prisons.

18 Also, I will make a judicial recommendation that you
19 participate in vocational training to prepare you to enter
20 the workforce upon release from custody.

21 Upon release from custody you will be placed on
22 supervised release for a term of three years. This term
23 will be served concurrently on Counts One and Two.

24 Within 72 hours of release from custody of the Bureau
25 of Prisons you must report in person to the Probation Office

1 in the district to which you are released.

2 The Court will not impose a fine, as you do not have
3 the financial ability to pay a fine.

4 While on supervised release, you must comply with the
5 following terms and conditions:

6 You will not commit any federal, state, or local crime,
7 nor will you illegally possess a controlled substance.

8 You will refrain from any unlawful use of a controlled
9 substance. You will submit to one drug test within 15 days
10 of release from custody and at least two periodic drug tests
11 thereafter, not to exceed 104 tests per year, as directed
12 by the Probation Services.

13 You must submit to the collection of a DNA sample as
14 directed by the Probation Office, and you must comply with
15 the standard conditions described at United States
16 Sentencing Guidelines Section 5D1.1(3)(c). These will be
17 set forth in the Judgment.

18 You are prohibited from possessing a firearm,
19 destructive device or other dangerous weapon.

20 You will participate in a program for substance abuse
21 counseling as directed by Probation Office, subject to the
22 same testing conditions I previously indicated. You may be
23 required to contribute to the cost of such services based on
24 your ability to pay or the availability of a third-party
25 payor.

1 You also are to participate in an educational services
2 programs and a vocational services programs that the
3 Probation Office deems would be for your benefit, again with
4 the requirement that you may have to contribute to the cost
5 of such services.

6 Finally, by operation of law, you are required to pay
7 to the United States a special assessment of \$200, which is
8 due immediately.

9 MR. CROWLEY: Your Honor, could I ask for
10 clarification on the supervised release.

11 I believe it's five years for Count Two.

12 THE COURT: I'm sorry. You're right. I misspoke.
13 I'm sorry. It's three years as to Count One; five years
14 supervised release as to Count Two.

15 MR. CROWLEY: Thank you, your Honor.

16 THE COURT: Okay. With that correction, I believe
17 that Mr. Simmons is entitled -- no, actually, I think the
18 waiver of appeal actually takes effect because this is a
19 lower sentence than contemplated.

20 MR. CROWLEY: That's correct.

21 THE COURT: So there is then no reason for a notice
22 of appeal .

23 Good luck, Mr. Simmons. I know it's a long time, but
24 you've got to make the best of it.

25 I am going to make a recommendation on the Judgment

1 that you be placed in a facility as close to New Jersey and
2 your family as the Bureau of Prisons deems appropriate in
3 the circumstances of the case.

4 But there will be some opportunities. Try to take
5 advantage of them so that this just doesn't repeat itself
6 again. So good luck to you.

7 Okay. We will be adjourned.

8 THE CLERK: All rise.

9 (Proceedings adjourned.)
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C E R T I F I C A T E

I, James P. Gibbons, Official Court Reporter for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

/s/James P. Gibbons
James P. Gibbons

September 28, 2016

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